

AMENDED IN ASSEMBLY MAY 5, 2016  
AMENDED IN ASSEMBLY MARCH 17, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2655**

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**Introduced by Assembly Member Weber**

February 19, 2016

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An act to amend Section 1305 of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 2655, as amended, Weber. Bail: jurisdiction.

Existing law generally regulates the provision of bail or bond, including forfeiture, vacation of forfeiture, and exoneration of bail or bond. Existing law requires the court to declare bail to be forfeited if, without sufficient excuse, a defendant fails to appear as specified. Existing law denies the court jurisdiction to declare a forfeiture and requires the bail to be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.

This bill would authorize an extension of the court's jurisdiction to declare a forfeiture and authority to release bail for not more than 90 days *from the date of the arraignment* if the arraignment is properly continued to allow the prosecutor time to file the complaint ~~and~~ *or if* the defendant requests the extension in writing or in open court.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1305 of the Penal Code is amended to read:

1305. (a) (1) A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

(A) Arraignment.

(B) Trial.

(C) Judgment.

(D) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.

(E) To surrender himself or herself in execution of the judgment after appeal.

(2) (A) Notwithstanding paragraph (1), except as provided in subparagraph (B), the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.

(B) The court's jurisdiction to declare a forfeiture and authority to release bail may be extended for not more than 90 days ~~if both from the arraignment date originally set by the jailer pursuant to subdivision (a) of Section 1269b if either~~ of the following occur:

~~(i) The arraignment is continued to allow the prosecutor time to file the complaint.~~

(i) *The prosecutor requests in writing or in open court that the arraignment be continued to allow the prosecutor time to file the complaint.*

(ii) The defendant requests the extension in writing or in open court.

(b) (1) If the amount of the bond or money or property deposited exceeds four hundred dollars (\$400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the

1 180-day period provided for in this section shall be extended by  
2 a period of five days to allow for the mailing.

3 (2) If the surety is an authorized corporate surety, and if the  
4 bond plainly displays the mailing address of the corporate surety  
5 and the bail agent, then notice of the forfeiture shall be mailed to  
6 the surety at that address and to the bail agent, and mailing alone  
7 to the surety or the bail agent shall not constitute compliance with  
8 this section.

9 (3) The surety or depositor shall be released of all obligations  
10 under the bond if any of the following conditions apply:

11 (A) The clerk fails to mail the notice of forfeiture in accordance  
12 with this section within 30 days after the entry of the forfeiture.

13 (B) The clerk fails to mail the notice of forfeiture to the surety  
14 at the address printed on the bond.

15 (C) The clerk fails to mail a copy of the notice of forfeiture to  
16 the bail agent at the address shown on the bond.

17 (c) (1) If the defendant appears either voluntarily or in custody  
18 after surrender or arrest in court within 180 days of the date of  
19 forfeiture or within 180 days of the date of mailing of the notice  
20 if the notice is required under subdivision (b), the court shall, on  
21 its own motion at the time the defendant first appears in court on  
22 the case in which the forfeiture was entered, direct the order of  
23 forfeiture to be vacated and the bond exonerated. If the court fails  
24 to so act on its own motion, then the surety's or depositor's  
25 obligations under the bond shall be immediately vacated and the  
26 bond exonerated. An order vacating the forfeiture and exonerating  
27 the bond may be made on terms that are just and do not exceed  
28 the terms imposed in similar situations with respect to other forms  
29 of pretrial release.

30 (2) If, within the county where the case is located, the defendant  
31 is surrendered to custody by the bail or is arrested in the underlying  
32 case within the 180-day period, and is subsequently released from  
33 custody prior to an appearance in court, the court shall, on its own  
34 motion, direct the order of forfeiture to be vacated and the bond  
35 exonerated. If the court fails to so act on its own motion, then the  
36 surety's or depositor's obligations under the bond shall be  
37 immediately vacated and the bond exonerated. An order vacating  
38 the forfeiture and exonerating the bond may be made on terms that  
39 are just and do not exceed the terms imposed in similar situations  
40 with respect to other forms of pretrial release.

1 (3) If, outside the county where the case is located, the defendant  
2 is surrendered to custody by the bail or is arrested in the underlying  
3 case within the 180-day period, the court shall vacate the forfeiture  
4 and exonerate the bail.

5 (4) In lieu of exonerating the bond, the court may order the bail  
6 reinstated and the defendant released on the same bond if both of  
7 the following conditions are met:

8 (A) The bail is given prior notice of the reinstatement.

9 (B) The bail has not surrendered the defendant.

10 (d) In the case of a permanent disability, the court shall direct  
11 the order of forfeiture to be vacated and the bail or money or  
12 property deposited as bail exonerated if, within 180 days of the  
13 date of forfeiture or within 180 days of the date of mailing of the  
14 notice, if notice is required under subdivision (b), it is made  
15 apparent to the satisfaction of the court that both of the following  
16 conditions are met:

17 (1) The defendant is deceased or otherwise permanently unable  
18 to appear in the court due to illness, insanity, or detention by  
19 military or civil authorities.

20 (2) The absence of the defendant is without the connivance of  
21 the bail.

22 (e) (1) In the case of a temporary disability, the court shall order  
23 the tolling of the 180-day period provided in this section during  
24 the period of temporary disability, provided that it appears to the  
25 satisfaction of the court that the following conditions are met:

26 (A) The defendant is temporarily disabled by reason of illness,  
27 insanity, or detention by military or civil authorities.

28 (B) Based upon the temporary disability, the defendant is unable  
29 to appear in court during the remainder of the 180-day period.

30 (C) The absence of the defendant is without the connivance of  
31 the bail.

32 (2) The period of the tolling shall be extended for a reasonable  
33 period of time, at the discretion of the court, after the cessation of  
34 the disability to allow for the return of the defendant to the  
35 jurisdiction of the court.

36 (f) In all cases where a defendant is in custody beyond the  
37 jurisdiction of the court that ordered the bail forfeited, and the  
38 prosecuting agency elects not to seek extradition after being  
39 informed of the location of the defendant, the court shall vacate  
40 the forfeiture and exonerate the bond on terms that are just and do

1 not exceed the terms imposed in similar situations with respect to  
2 other forms of pretrial release.

3 (g) In all cases of forfeiture where a defendant is not in custody  
4 and is beyond the jurisdiction of the state, is temporarily detained,  
5 by the bail agent, in the presence of a local law enforcement officer  
6 of the jurisdiction in which the defendant is located, and is  
7 positively identified by that law enforcement officer as the wanted  
8 defendant in an affidavit signed under penalty of perjury, and the  
9 prosecuting agency elects not to seek extradition after being  
10 informed of the location of the defendant, the court shall vacate  
11 the forfeiture and exonerate the bond on terms that are just and do  
12 not exceed the terms imposed in similar situations with respect to  
13 other forms of pretrial release.

14 (h) In cases arising under subdivision (g), if the bail agent and  
15 the prosecuting agency agree that additional time is needed to  
16 return the defendant to the jurisdiction of the court, and the  
17 prosecuting agency agrees to the tolling of the 180-day period, the  
18 court may, on the basis of the agreement, toll the 180-day period  
19 within which to vacate the forfeiture. The court may order tolling  
20 for up to the length of time agreed upon by the parties.

21 (i) As used in this section, “arrest” includes a hold placed on  
22 the defendant in the underlying case while he or she is in custody  
23 on other charges.

24 (j) A motion filed in a timely manner within the 180-day period  
25 may be heard within 30 days of the expiration of the 180-day  
26 period. The court may extend the 30-day period upon a showing  
27 of good cause. The motion may be made by the surety insurer, the  
28 bail agent, the surety, or the depositor of money or property, any  
29 of whom may appear in person or through an attorney.

30 (k) In addition to any other notice required by law, the moving  
31 party shall give the prosecuting agency a written notice at least 10  
32 court days before a hearing held pursuant to subdivision (f), (g),  
33 or (j), as a condition precedent to granting the motion.